DOCUMENT RESUME

ED 303 235 PS 017 644

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TITLE Legal Liability of Children and Parents in North Dakota.
INSTITUTION North Dakota Univ., Grand Forks. Bureau of Business and Economic Research.
PUB DATE Oct 88
NOTE 47p.; North Dakota Economic Studies, Number 53.
PUB TYPE Viewpoints (120)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Children; *Contracts; *Criminal Law; Injuries; *Legal Responsibility; *Parents; *Torts
IDENTIFIERS Minnesota; *North Dakota

ABSTRACT

Three legal issues are examined: (1) the responsibility of children for breached contracts and the commission of torts; (2) parental liability; and (3) relevant law in North Dakota and other states. The people most affected by the actions of children are parents, merchants, and victims of vandalism. People who enter into contracts with children need to understand that minors may disaffirm their contracts and obtain a refund of any monies advanced. Parental responsibility for the torts of children is probably the most sensitive issue in this area of the law. Balancing a victim's right to be compensated with the imposition of parental liability is difficult. Arguably, the statutory limits on parental liability in most states are insufficient and should be increased to a higher amount. In most circumstances, it is very difficult for victims to recover from parents under a negligent supervision theory. A highly publicized increase in the statutory parental liability could stimulate parents to discuss the implications of delinquent behavior with their children. This could be the first step toward eliminating the problem of vandalism. (RH)

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North Dakota Economic Studies, Number 53

Legal Liability of Children And Parents in North Dakota

by

Randall K. Hanson

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October 1968

Bureau of Business and Economic Research
University of North Dakota
North Dakota Economic Studies, Number 53

LEGAL LIABILITY OF CHILDREN AND PARENTS IN NORTH DAKOTA

by

Randall K. Hanson

October 1988

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ABSTRACT

The topic of juvenile and parental liability is important given the widespread problems of juvenile delinquency, vandalism, and the fact that juveniles possess tremendous purchasing power in today's marketplace. Minors are becoming more and more involved with our legal system. More minors are entering into contracts and, unfortunately, more children are committing acts of negligence and intentional acts of vandalism.

When minors breach contracts or commit torts, victims of these wrongful actions expect compensation. When looking at victim's rights it becomes important to determine how much liability should be placed on a child who lacks maturity and discretion. Should children be held fully accountable for all of their actions? Even if the minor can be held liable for his actions, invariably the minor lacks sufficient assets to pay for his/her wrongs. Victims then desire compensation from the minor's parents. It then becomes necessary to define the proper extent of a parent's liability for the actions of their children.

This article examines the responsibility of a child for breached contracts and for tortious conduct. Then parental liability is examined for their child's breached contracts and tortious actions. These issues are important to children, parents, merchants, and victims of vandalism.

Merchants need to be particularly careful in selling goods to minors. North Dakota has passed a number of important statutes regarding a minor's ability to disaffirm certain types of contracts.

Parental responsibility for vandalism is a particularly sensitive issue. Balancing a victim's right to be compensated with the imposition of parental liability is difficult. It is easy to sympathize with a victim of a child's act of vandalism. Without parental liability very often a victim will be unable to recover for the senseless loss of property rights. On the other hand, all parents can appreciate how difficult it is sometimes to control the actions of an immature child. North Dakota has passed a statute imposing liability on parents for the intentional wrongful actions of their children. This statute will be closely examined in this report.

ACKNOWLEDGMENTS

The author is grateful for the useful suggestions provided by the reviewers of this project. Particular thanks goes to Bureau Director Bulent Uyar for his perceptive comments and suggestions. The author also gratefully acknowledges the funding provided for this project by the North Dakota Bureau of Business and Economic Research.

LEGAL LIABILITY OF CHILDREN AND PARENTS IN NORTH DAKOTA

I. Introduction.

Minors are becoming more and more involved with our legal system. More minors are entering into contracts and, unfortunately, more children are committing acts of negligence and intentional acts of vandalism. Minors have the ability to avoid many contractual obligations and people who enter into contracts with minors need to become familiar with a minor's ability to disaffirm their contracts.

When minors breach contracts or harm individuals, victims typically are forced to protect their rights by commencing civil lawsuits. Since minors typically do not have sufficient assets to pay for their actions, invariably the question of parental liability arises.

What liability should a parent have for a minor child who purchases a car and then defaults on the payments? What liability should a parent have when their child vandalizes school property or private property? In turn, what responsibility should children have for their actions given their lack of maturity and discretion? These issues are important for children, parents, merchants, and victims of vandalism.

The purposes of this report are as follows:

1) to address a minor's contract liability, including a minor's ability to disaffirm certain contracts;
2) to address a minor's responsibility for tortious conduct such as acts of negligence or intentional wrongs (e.g., vandalism);
3) to address a parent's liability for contracts executed by a minor; and
4) to address the issue of parental liability for negligent actions and intentional wrongful actions of children.

These topics will be discussed in light of North Dakota law. In some situations North Dakota law differs from the approach used in other states and comparisons to other approaches give an insight into the difficulties of finding the best approach to deal with juvenile problems. Since Minnesota is a neighboring state, it is also interesting to compare its approach to North Dakota.

II. Minor's Contract Liability.

A. Common Law.

At common law it was recognized that minors lacked maturity and the common sense required to protect themselves from being manipulated by older, more experienced persons.[1] Therefore, the law developed that a minor was allowed to enter into contracts, but the minor was allowed to escape certain contracts by giving proper notice of his intent to disaffirm the contract. This was

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[1] See 2 Williston, Contracts sec. 226 (3d. 1959); 42 Am. Jur. 2d Infants sec. 84 (1969); Heney v. Root, 33 N.Y. 526, 536 (1865); Kronman, Paternalism and the Law of Contracts, 92 Yale L.J. 763, 788 (1983).

accomplished under the theory that a minor lacked legal capacity. Minors were allowed to escape contracts involving luxury items (non-necessity items),[2] but were held responsible for contracts involving necessity items.[3]

1. Necessity Contracts.

Examples of necessity contracts include contracts involving food, clothing, medical care,[4] or shelter.[5] Necessities would generally include any essential to life.[6] A minor's contract to purchase a winter coat or milk, etc. was deemed a necessity at common law. Although the minor could not avoid a necessity contract, the price could be reduced to the fair value of the

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[2] 2 Williston, Contracts sec. 242 (3d ed. 1959).

[3] Id. at sec. 241. See also J. Calamari and J. Perillo, The Law of Contracts sec. 8-8 (1970).

[4] 42 Am. Jur. 2d, Infants, sec. 72 (1969). Cole v. Wagner, 150 S.E. 339 (1929). Greenville Hospital System v. Smith, 239 S.E.2d 657 (1977).

[5] Webster Street Partnership Ltd. v. Sheridan, 368 N.W.2d 439 (1985).

[6] J. Calamari and J. Perillo, supra note 3.

A North Carolina court indicated that a "necessity" should be broadly defined by stating: "In our view, the concept of 'necessaries' should be enlarged to include such articles of property and such services as are reasonably necessary to enable the infant to earn the money required to provide the necessities of life for himself and those who are legally dependent upon him." Gastonia Personnel Corp. v. Rogers, 172 S.E.2d 19, 24 (1960).

In Cidis v. White, 336 N.Y.S.2d 362 (N.Y. 1972) the court held that contract lenses purchased by a minor constituted a necessity contract which could not be avoided by the minor purchaser. The minor had argued that the contract involved a non-necessity.

necessity so the minor was not left having to pay an unfair price.[7]

2. Luxury Contracts.

Luxury items include non-essentials to life. Common modern examples would be stereos, television sets, VCR's, toys, record albums, etc. At common law minors had broad ability to escape luxury contracts. To disaffirm the contract all the minor had to do was to return what was left of the item that was purchased.[8] This was true even if the luxury item was severely damaged or destroyed.[9] For example, Junior purchases a stereo and breaks it after using it for several months. When Junior decides that he doesn't want the stereo anymore he can disaffirm the contract and return the damaged stereo to the merchant who sold the stereo. The merchant must refund the full purchase price of the stereo to the minor. This approach was adopted under the assumption that the minor lacked legal capacity to enter into contracts. The

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[7]J. Calamari and J. Perillo, supra note 3, sec. 8-8; Sceva v. True, 53 N.H. 627 (1873).

[8]2 Williston, Contracts sec. 238 (3d ed. 1959); Halbman v. Lemke, 298 N.W.2d 562, 565 (1980); Restatement of Restitution, sec. 62, comment b (1937); Return of Property Purchased by Infant as Condition of Recovery of Purchase Price, 124 A.L.R. 1368.

[9]Fischer v. Taylor Motor Co., 107 S.E.2d 94 (1959); Weisbrook v. Clyde C. Netzley, Inc., 374 N.E. 2d 1102 (1978).

In Navin, The Contracts of Minors Viewed from the Perspective of Fair Exchange, 50 N.C.L. Rev. 517, 521 (1972), the author states: "Colorful indeed, but the result is that the minor can . . . drive the car over a cliff, recover his down payment and go his legal merry way."

power to disaffirm rests entirely with the minor.[10] Thus, after executing a contract only the minor could choose to disaffirm the contract--the merchant could not seek to disaffirm the contract before the item purchased was used up or destroyed.

Some states have chosen not to follow the common law which allowed minors to return destroyed goods and receive a full refund.[11] For example, in Minnesota, if a minor wishes to disaffirm a luxury contract the minor must restore the seller to the position the seller was in before the contract was executed in order to disaffirm the contract.[12] This would mean that if the good were partially damaged the minor would still be able to disaffirm the contract, but the minor would only receive a partial refund. This approach is supported by the argument that this better protects merchants and teaches minors the importance of being a responsible person. Many states, including North Dakota, still follow the common law and allow the minor to obtain a full refund even if the luxury item has been damaged or destroyed.

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[10]Beane, The Role of an Infant as a Member of a Partnership, 87 Com. L.J. 622, 623 (1982).

[11]Annot., Infant's Liability for Use or Depreciation of Subject Matter, in Action to Recover Purchase Price Upon His Disaffirmance of Contract to Purchase Goods, 12 A.L.R.3d 1174 (1967); Note, Restitution in Minor's Contracts in California, 19 Hastings L. Rev. 1199 (1968); Beane, supra note 10 at 624.

[12]Kelly v. Furlong, 261 N.W. 460 (1935). See generally, 9A Dunnell Minn. Digest Infants sec. 2.04 (1) (1987).

At common law a minor who misrepresented his age could still disaffirm luxury contracts.[13] If a minor who is 17 represents himself as being 21 years old he is still able to disaffirm the contract. Some states have taken an approach which provides that minors cannot avoid their luxury contracts if they lie about their age.[14] Most states still follow the common law approach and still allow disaffirmance. Perhaps the fact that the minor lied about his age indicates that the minor is immature and in need of legal protection against contract liability. On the other hand, avoidance of the contract by the minor is very frustrating to a merchant who has in good faith relied on the age representation of the minor in entering into the contract.

A minor was generally allowed to disaffirm a contract while still a minor or for a reasonable time after becoming an adult.[15] What constituted a reasonable time after adulthood was to be decided under the particular circumstances of each situation. If after reaching the status of adulthood the minor ratified the

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[13]In Kiefer v. Fred Howe Motors, Inc., 158 N.W.2d 288 (1968) a minor signed a contract which included a statement that read: "I represent that I am 21 years of age or over and recognize that the dealer sells the above vehicle upon this representation." The minor who signed the contract misrepresented his age and was still allowed to disaffirm the automobile contract. The court felt that the car dealer should have taken additional steps to determine if the buyer was in fact an adult.

See 2 Williston, Contracts sec. 245 (3d. 1959).

[14]Steigerwald v. Woodhead Co., 186 Minn. 558, 244 N.W.2d 412 (1932).

[15]2 Williston, Contracts sec. 235 (3d ed. 1959); C. Calamari and J. Perillo, supra note 3 at sec. 8-4.

contract then it was too late to disaffirm the contract.[16] Ratification could be found present either by the minor expressly indicating his intention to be bound by the contract or by an implied affirmation through continued use of the luxury item after adulthood.

3. Necessity Item or Luxury Item.

Some items are difficult to classify as either necessity items or luxury items. Automobiles, for example have sometimes been deemed a necessity and sometimes a luxury item.[17] Some states have held that a minor's contract to buy a car is a necessity contract if the car will be used to travel to a job to earn money to buy food or shelter, etc.[18] It is an important distinction because if the car is deemed a necessity then the minor cannot avoid the contract and the merchant will be able to enforce the contract against the minor. In turn, if the car is deemed a luxury the contract will be avoidable by the minor. Some states have held that an automobile is not an essential to life and is merely a luxury item which is subject to avoidance by the minor.[19]

Another example of the difficulty in deciding if a contract involves a luxury or a necessity involved a contract by a minor

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[16]Navin, supra note 9 at 527. See Jones v. Dressel, 623 P.2d 370 (Colo. 1981).

[17]Annot., Automobile or Motorcycle as Necessary for Infant, 56 A.L.R.3d 1335.

[18]Id.

[19]Star Chevrolet Co. v. Green, 473 So.2d 157 (Miss. 1985).

with an employment agency.[20] A minor executed a contract with an employment agency promising to pay the agency a service fee if the agency found the minor a job.[21] The agency located a job for the minor and the minor refused to pay the service fee.[22] When the agency sued the minor the minor defended on the grounds that the contract was a luxury contract which he wished to avoid. The court held that this contract enabled the minor to earn money with which the minor could purchase necessities and therefore the contract was treated as a necessity contract which the minor could not avoid.[23] In holding this contract a necessity contract the court noted that the dominant purpose of the law in permitting infants to disaffirm their contracts is to protect children and those of tender years from their own improvidence, or want of discretion, and from the wiles of designing men. The court stated:

> Society has a moral obligation to protect the interest of infants from overreaching adults. But this protection must not become a straight jacket, stifling the economic and social advancement of infants who have the need and maturity to contract. Nor should infants be allowed to turn that protective legal shield into a weapon to wield against fair-dealing adults.[24]

Courts will no doubt continue to be called upon to decide if a contract involves a necessity or a nonnecessity item. As minors

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[20]Gastonia Personnel Corp. v. Roger, 172 S.E.2d 19 (1970).

[21]Id. at 20.

[22]Id.

[23]Id. at 24.

[24]Id.

become more and more sophisticated and worldly it may well become necessary to expand the definition of what constitutes a necessity.

B. North Dakota Law.

North Dakota has passed a number of statutes concerning a minor's contract liability. Most of the North Dakota statutes are consistent with the common law provisions discussed above. Under North Dakota law a minor has the ability to execute contracts the same as an adult except that a minor cannot execute a real estate contract nor can a minor enter into a contract to sell personal property which is not in his possession.[25] Outside of these two exceptions a minor is free to enter into any contract. Similar to the common law, North Dakota law distinguishes necessity contracts from non-necessity (luxury contracts) and allows minors to disaffirm luxury contracts but holds minors liable on necessity contracts.[26] If the price of the necessity is unreasonably excessive, the price will be reduced to the fair value of the necessity.[27] The North Dakota statute on necessities adopts a narrow approach to necessities in that the minor will not be held liable for a necessity contract if the minor was under the care of a parent who was able to provide the necessity for the minor.[28]

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[25]N.D. Cent. Code sec. 14-10-09 (1943) and sec. 14-10-10 (1943).

[26]N.D. Cent. Code sec. 14-10-12 (1973).

[27]Id.

[28]Id.

Thus if a minor goes out and buys an expensive winter coat which a parent was able to provide for the minor, then the minor is not liable for the coat and can disaffirm the contract. A narrow interpretation of what constitutes a necessity results in a more protective approach towards minors. Since North Dakota law uses a narrow approach in defining a necessity it follows that most contracts executed by minors in North Dakota will involve luxury contracts.

Since luxury contracts can be avoided in North Dakota it is imperative that merchants become aware of this powerful ability of a minor to avoid their contracts. North Dakota statutes are very protective of minors who enter into contracts. This is clearly shown by the long period of time which the minor has to decide if he/she wishes to disaffirm the contract.[29] North Dakota statutes allow the minor to disaffirm non-necessity contracts anytime while they are a minor or within one year after they reach majority age.[30] This period of time is much longer than at common law or that which is used in most other states. The more common approach is to allow the minor to disaffirm only for a reasonable time

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[29]N.D. Cent. Code sec. 14-10-11 (1973).

[30]Id.

after the minor turns of age. That in most cases would be for a lesser period of time than one year.[31]

Many merchants and individual sellers are unaware that minors can avoid their contractual obligations for non-necessities. One category of merchants that are generally aware of the minor's ability to disaffirm contracts are car dealers. Car dealers have been hurt by minors disaffirming car contracts enough times that they are very cautious in dealing with minors. Often car contracts are treated as luxury contracts and can be disaffirmed by minors. Frequently the minor does not decide to disaffirm the car purchase contract until after the car has been wrecked or seriously damaged.[32] When the minor disaffirms the contract the car dealer gets back a wrecked car and then is forced to return all monies advanced by the minor who bought the car. North Dakota appears to follow the common law which allows the minor to disaffirm luxury contracts by merely returning the purchased item

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[31]J. Calamari and J. Perillo, supra note 3 at 236. Career Placement of White Plains, Inc. v. Vaus, 77 Misc. 2d 788, 791, 354 N.Y.S.2d 764, 768 (Sup. Ct. West Co., 1974); Eastern Airlines Inc. v. Stuhl, 65 Misc. 2d 901, 318 N.Y.S.2d 966 (Civ. Ct. N.Y. Co., 1970) (five months was held not to be an unreasonable time); Bobby Floars Toyota, Inc. v. Smith, 269 S.E.2d 320 (N.C. App. 1980) (ten months was not a reasonable time to disaffirm an automobile contract).

[32]Navin, supra note 9 at 518-521.

in its present condition.[33] As a result of this infancy doctrine, car dealers now generally will not sell to a minor unless a solvent adult co-signs or guarantees the contract. If an adult co-signs the contract the minor can still disaffirm the contract, but the adult will remain responsible for fulfilling the contract obligations.

All merchants should take heed from the approach used by car dealers. Entering into a luxury contract with a child is a risk which merchants and individuals alike should avoid. If a merchant or individual suspects that the person they are dealing with is a minor then the merchant or individual should ask for some conclusive evidence as to the age of the young person. Persons entering into contracts with young persons cannot rely on the young person's assertion that they are over 18. Fraudulent

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[33]A number of jurisdictions including Minnesota have not followed the general common law approach. A number of states provide that a minor disaffirming a contract must restore the merchant to its original position before disaffirmance will be allowed. Many scholars have asserted that this approach better protects the interests of all concerned. This approach certainly has the approval of merchants. Some feel that the infancy doctrine is out of date and inappppropriate in today's marketplace.

See Edge, Voidability of Minor's Contracts: A Feudal Doctine in a Modern Economy, 1 Ga. L. Rev. 205 (1967); Navin, The Contracts of Minors Viewed from the Perspective of the Fair Exchange, 50 N.C.L. Rev. 517 (1972); McCamus, Restitution of Benefits Conferred Under Minor's Contracts, 28 U.N.B. L.J. 89 (1979). See 9A Dunnell Minn. Digest Infants sec. 204 (1987).

misrepresentation of age will not prevent the minor from disaffirming the contract in North Dakota.[34]

Minors who enter into contracts are usually purchasers rather than sellers. The same avoidance rules are applicable to contracts where the minor acts as a seller. If a minor sells a personal property item to another individual, the minor can disaffirm the sales contract and get the item sold back. The minor is allowed to get the item back and only has to return whatever is left of the purchase price. If the minor has spent all of the money which he received from the buyer, the minor has no obligation to the buyer and the buyer must return the purchased item to the minor.[35] Obviously it is unwise to purchase property from a minor who can squander the purchase price and then demand a return of the good. This power to disaffirm a sales contract and reobtain the good is not allowed if the buyer has already sold the good to another innocent purchaser.[36] For example, a minor sells

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[34]Some states have held that a minor who lies about his age can still disaffirm the contract, but must restore the merchant to its earlier position (restitution). See 9A Dunnell Minn. Digest Infants sec. 2.04 (1987); Steigerwald v. Woodhead Co., 186 Minn. 558, 244 N.W. 412 (1932); Kiefer v. Fred Howe Motors, Inc., 158 N.W.2d 288 (Wis. Sup. Ct. 1968); 2 Williston, Contracts sec. 245 (3d ed. 1959).

[35]J. Calamari and J. Perillo, supra note 3 at 248.

[36]N.D. Cent. Code sec. 41-02-48 (1975); Uniform Commercial Code sec. 2-403.

"Where the infant has lost, squandered, or otherwise disposed of the consideration which he received, he may nevertheless, by the majority rule, disaffirm his contract and recover the consideration running from him." Note, Infant's Disaffirmance of a Contract: Methods for Handling the Injustice, 43 N.D. L. Rev. 89, 92 (1966).

a car to an individual who resells it to a used car dealership who has no knowledge of the minority status of the previous owner. The used car dealer would acquire legal title to the vehicle and the minor will not be able to obtain the vehicle from the innocent good faith purchaser.[37]

As indicated above a minor has no capacity to enter into real estate contracts.[38] It follows then that a person who buys real estate from a minor is in peril. Frequently minors can inherit real estate and it can certainly happen that the minor can wish to dispose of the real estate. If a minor sells real estate to an adult, the minor can squander the sale proceeds, disaffirm the contract, and get the real estate back from the buyer. This is particularly alarming because real estate contracts are typically large dollar amount contracts. In order to safely purchase real estate from a minor the buyer must demand that a formal guardian be appointed by the court and that the court approve the sale of the real estate.[39] The buyer will then receive a guardian's deed rather than a deed executed by the minor which would be ineffective.[40]

Many merchants will continue to sell to minors because minors provide a multi-million dollar market at least at the national

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[37]N.D. Cent. Code sec. 41-02-48 (1975).

[38]N.D. Cent. Code sec. 14-10-09 (1943).

[39]N.D. Cent. Code sec. 30.1-27-09 (1973).

[40]In Re Druhl's Estate, 61 ND 168, 237 N.W. 697 (1931).

level.[41] Many purchases by minors are never disaffirmed even though the minor has the power to disaffirm their luxury contracts. There are two main reasons why minor's do not disaffirm contracts more often: first, minors generally are not aware of this right, and secondly, many merchants or sellers will not voluntarily refund money to minors who disaffirm their contracts. If the merchant refuses to refund the purchase price then the minor will have to commence a lawsuit to undo the contract and receive a refund. Often the costs of this type of litigation will exceed the amount of the refund the minor would receive. Merchants who sell expensive luxury items are therefore the ones who need to be the most cautious in dealing with minors. The larger the amount involved, the more likely the minor will attempt to disaffirm the contract. This explains why car dealers have experienced the most problems in dealing with minors. Car contracts frequently involve enough money to arouse a minor's interest in disaffirming the contract. North Dakota, by following the common law approach toward minors, tends to be protective of minors. Arguably this approach treats the rights of merchants harshly. A minority of states have adopted a less protective approach toward minors. Many legitimate arguments can be made that in our modern age of sophisticated minors, that the common law is outmoded and inefficient in achieving justice. On the other hand, it also may be argued that minors need protection from

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[41]Note, Infant's Disaffirmance of a Contract: Methods of Handling the Resulting Injustice, 43 N.D. L. Rev. 89, 98 (1966).

unscrupulous merchants who will prey on immature and unsophisticated minors. Slick advertising and promotionals may easily entice young people to enter into unfavorable contracts. Minnesota, as a neighboring state, provides an interesting comparison to North Dakota law because Minnesota is less protective of minors and appears more concerned with protecting the rights of merchants who contract with minors.

C. Minnesota Law.

Minnesota allows minors to enter into contracts and to escape luxury contracts much like North Dakota's approach. The key difference between North Dakota law and Minnesota law is that a minor who wishes to disaffirm a luxury contract in Minnesota must make restitution to the merchant.[42] Restitution means that the merchant must be put back into the position the merchant was in before the contract with the minor was executed. For example, Junior, a minor, purchases a car for $5,000.00 in cash. He then has an accident making the car inoperable and causing two thousand dollars in damages. Since the car is inoperable Junior decides to disaffirm the luxury contract. Under Minnesota law Junior must return the car, but can only receive a refund of $3,000.00 because of the restitution requirement. Under North Dakota law Junior would receive a refund of $5,000.00 (the total purchase price) and the seller would get back the damaged vehicle. (Note that under Minnesota law, the minor will not have to make restitution if the

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[42] See supra note 12.

seller has sold a defective good or has in some way breached the contract with the minor.)

If a minor misrepresents his age while entering into a luxury contract, Minnesota will still allow the minor to disaffirm the contract, but the minor will again have to make restitution to the merchant in order to disaffirm the contract.[43] North Dakota law allows a minor who lies about his/her age to still be able to escape the contract without making restitution to the seller.

It is clear that minors can avoid a number of contracts and successfully escape their contractual obligations. What should a minor's responsibility be for causing property damages or personal injuries?

III. Minor's Tort liability and Criminal Liability.

If a minor harms someone or something the minor can incur civil liability and criminal liability for his/her actions. As noted above a minor lacks contractual capacity and this allows a minor to escape contractual liability. This does not mean that a minor escapes liability for his tortious or criminal conduct.

A. Tort Lawsuits Against Minors at Common Law and in North Dakota.

The most common civil tort theories involving children are intentional torts and negligence. (North Dakota law follows the common law theories of Tort Law). If a minor intentionally or negligently causes property damage or personal injuries, the

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[43]Steigerwald v. Woodhead Co., 186 Minn. 558, 244 N.W.2d 412 (1932).

victim of the minor's actions may sue the minor for damages or injuries.[44] The victim if successful will typically receive a money judgment against the minor. Often victims are reluctant to sue a minor for negligence or vandalism because minors have few assets and the enforcement of the judgment can be difficult. Converting a judgment to cash can be very difficult for a successful plaintiff. However, even if the minor presently has few assets, the minor may acquire assets in the future which may be seized to enforce the judgment. A judgement in North Dakota, as in many states, is good for ten years[45] and is renewable even after the initial ten years have expired.[46] Therefore it may be worthwhile for the victim to pursue his claim against the minor, even if it appears that the judgment is presently unenforceable.

1. Intentional Torts by Minors.

Intentional tort theories are available when a person intentionally inflicts damages or injuries on another. If a minor intentionally causes property damages or personal injuries, the victim generally has little trouble obtaining a money judgment against the minor. Often the only difficulty in successfully

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[44]W. Prosser & W. Keeton, The Law of Torts, sec. 123 at 912, 913 (5th ed. 1984); Levine, Parental Liability for the Torts of Their Minor Children: Limits, Logic, and Legality, 9 Nova L.J. 205 (1984).

The Second Restatement of Torts provides: "One who is an infant is not immune from tort liability solely for that reason. . . ." Restatement (Second) of Torts, sec. 895I (1979).

[45]N.D. Cent. Code sec. 28-20-13 (1985).

[46]N.D. Cent. Code sec. 28-20-23 (1943).

obtaining a judgment will be in establishing the identity of the minor alleged to have done the harm.

No doubt, the most common example of an intentional tort committed by a minor would be an act of vandalism. If a minor throws a rock through a car windshield, the owner of the car can sue the minor (if he can be identified) under the tort theory of trespass to personal property or conversion.[47] The victim will receive a money judgment for the amount of the damages caused by the minor. Another common example of vandalism would be the destruction of school property by a minor. The school district or state could sue the minor for the damages suffered under the tort theory of trespass to real estate.

Not all intentional torts by minors are directed at the destruction of property. Minors also may intentionally inflict personal injuries. For example, if Junior strikes another with his fist, the victim may sue the minor for this intentional wrong under the tort theories of assault and battery.[48]

Intentional torts by minors usually also constitute a criminal act and may give rise to a criminal prosecution as will be discussed below. Frequently a criminal prosecution will not adequately compensate a victim, resulting in the need for a civil lawsuit by a victim to recover for the damages or injuries inflicted by the minor.

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[47]W. Prosser & W. Keeton, supra note 44 at 85-107.

[48]Id. at 39-46.

2. Negligently Inflicted Damages by Minors.

Negligence involves a situation where someone is not using sufficient care under the circumstances resulting in another being damaged.[49] In order to establish a negligence claim it is not necessary to show an intent to injure the victim. Negligence claims are the result of accidental or unintentional actions. To win under a negligence theory the victim will have to show the following elements:

1) Existence of a legal duty.[50]
2) Unreasonable behavior which breaches the duty of care.[51]
3) Proximate cause--a connection between the actions of the minor and the resulting injuries suffered by the victim.[52]
4) Actual injuries or damages must be established.[53]

The first element, the showing of a legal duty, will usually be easy to establish. If a minor is going to interact with society he/she has an obligation to act reasonably under the circumstances.

In order to establish the second element above, the victim will have to show that the minor has failed to act as a reasonably prudent minor under the circumstances. This requirement can make

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[49] Restatement (Second) of Torts, sec. 282.

[50] Id. at sec. 320.

[51] Id. at sec. 328A. Dimond v. Kling, 221 N.W.2d 86 (1974).

[52] Id.

[53] In any civil action the burden of proof is on the plaintiff to establish the extent of the injuries or damages suffered.

it difficult to recover from a minor. Children generally do not have to act in the same manner as is expected of an adult.[54] If the victim is injured, but the child has acted in a way in which an average child would act under the circumstances, then the victim will lose on the negligence claim because the child has not been shown to have acted unreasonably. Less is expected of children because of their lack of maturity.[55] In many states, if a minor chooses to engage in an adult activity, then the minor will be held to an adult standard of care. Driving a car has been treated as an adult activity in many states and if a minor insists on driving, then the minor must operate the automobile in a manner similar to how a reasonable adult would have driven under the circumstances.[56] This would make it easier to receive a judgment against the minor since more would be expected of the minor who is judged against an adult standard of care. Other activities which have been deemed adult activities include the operation of

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[54]See Forell, Reassessing the Negligence Standard of Care for Minors, 15 N.M. L. Rev. 485-508 (1985).

A child must use the same degree of care as a reasonable child "of like age, intelligence, and experience under like circumstances." An adult must act like like a "reasonable person under the circumstances." Accordingly, it is easier to conform to the child's standard of care than to the adult's standard. Id. at 486.

[55]Id.

[56]Forell, Reassessing the Negligence Standard of Care for Minors, 15 N.M. L. Rev. 485 (1985); Binchy, The Adult Activities Doctrine in Negligence Law, 11 Wm. Mitchell L. Rev. 733 (1985).

tractors,[57] snowmobiles,[58] motorboats,[59] minibikes,[60] go carts,[61] motorcycles,[62] motor-scooters,[63] and mopeds.[64] Riding a bicycle has generally not been treated as an adult activity.[65] Several courts have dealt with a minor's use of guns and the argument that this should be treated as an adult activity.[66] The general approach in negligent gun discharge cases has been to not apply the adult standard of care requirement.[67] Obviously this then makes it more difficult to recover a judgment against the allegedly negligent minor. Several jurisdictions have considered cases where a minor has injured a person while the minor was golfing.[68] Courts have had to determine if golfing should be

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[57]Jackson v. McCuiston, 448 S.W.2d 33 (Ark. 1969). In Mack v. Davis, 76 Ill. App. 2d 88, 221 N.E.2d 121 (1966) the court distinguished driving a tractor from driving a car on public streets and held that a minor driving a tractor should not be held to an adult standard of care.

[58]Robinson v. Lindsay, 598 P.2d 392 (Wash. 1979).

[59]Dellwo v. Pearson, 107 N.W.2d 859 (Minn. 1961).

[60]Fishel v. Givens, 362 N.E.2d 97 (1977); Perricone v. DiBartolo, 302 N.E.2d 637 (1973).

[61]Ewing v. Biddle, 216 N.E.2d 863 (Ind. 1963).

[62]Black v. Quinn, 646 S.W.2d 437 (1982).

[63]Tipton v. Mullinix, 508 P.2d 1072 (Okla. 1973).

[64]Terre Haute First Nat'l Bank v. Stewart, 455 N.E.2d 362 (Ind. App. 1983).

[65]See Forell, supra note 56 at 487.

[66]See, Binchy, supra note 56 at 750-751.

[67]Id.

[68]See Forell, supra note 56 at 487.

deemed an adult activity which would have required that the minor conform to an adult standard of care.[69] The decisions are split on this issue, but it appears that more jurisdictions are not treating golfing as an adult activity.[70] This makes it more difficult to recover for injuries inflicted by a minor golfer. The North Dakota Supreme Court hinted that golfing is not an adult activity in the 1978 case of Kirchoffner v. Quam.[71] In that case a minor playing golf struck another in the eye with a golf ball. The victim had been boating on a river adjacent to the golf course.[72]

The third requirement of a negligence claim is the showing of proximate cause.[73] The actions of the minor must be the cause of the injuries suffered by the victim. If the actions of the minor result in an unforeseeable injury then the minor is not liable for the injury.[74]

The final requirement is the showing of the extent of the injuries or damages caused by the victim. The burden of establishing the amount of the damages is always on the plaintiff

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[69] Id.

[70] Neumann v. Shlansky, 58 Misc. 2d 128, 294 N.Y.S.2d 628 (1968); Meyer v. Smith, 428 S.W.2d 612 (Ky. 1968); Gremillian v. State Farm Mut. Ins. Co., 331 So.2d 130 (La. 1976).

[71] 264 N.W.2d 203, 207 (N.D. 1978).

[72] Id.

[73] W. Prosser & W. Keeton, The Law of Torts sec. 41-45 (5th ed. 1984).

[74] Id.

in a civil action. In this regard a lawsuit against a minor will be no different than a lawsuit against an adult.

An additional hindrance to suing a minor on a negligence claim is the fact that the judgment obtained against the minor could be discharged by the minor if the minor files for Bankruptcy relief.[75] If a victim obtains a large negligence judgment against a minor, the minor may wait until he is of age and then go through Bankruptcy thereby discharging the negligence judgment.[76] Often when a minor turns 18 he has so few assets that he may not hesitate to file for Bankruptcy relief to discharge the judgment. Note that judgments for intentional torts are treated differently than negligence claims in that intentional tort claims are not dischargeable in Bankruptcy.[77] For this reason victims of intentional torts may be more willing to expend the time and money necessary to obtain a judgment against a minor. Perhaps the minor will obtain sufficient assets at a later date out of which the judgment can be satisfied. This is particularly true in jurisdictions where a judgment is good for ten years and is renewable thereafter.

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[75] See In re Cecchini: Willful and Malicious Injury--Nondischargeability in Bankruptcy, 17 Pac. L.J. 1511, 1522 (1986).

[76] Id.

[77] 11 U.S.C. sec. 523 (a) (6) (1982 & Supp. II 1984). See also Porter, Bankruptcy--Survival of Liability for Willful and Malicious Injury, 35 Ref. J. 53 (1961) and supra note 73.

B. Criminal Prosecutions of Minors.

Similar to an adult, a minor must comply with criminal statutes. At common law, if a minor over seven years of age violated the law the minor was held responsible for his/her actions.[78] However, minors under modern criminal statutes are not sentenced in the same manner as an adult. If a minor is found guilty of breaking the law--the legal system does not impose punishment, rather the goal of the legal system is to rehabilitate the juvenile and prepare the juvenile for a productive adult life.[79] Thus a common juvenile sentencing for criminal activity would be probation and counselling.[80] Arguably such sentencing is inadequate to deter criminal activity by a minor. Minors recognize that even if they are caught, the penalty for breaking the law will be insignificant.

Undoubtedly the most common criminal offense committed by juveniles is vandalism, the senseless destruction of public and private property. This problem is extremely frustrating to property owners who are innocent victims.

1. North Dakota Law.

When sentencing a minor for a criminal offense, some criminal jurisdictions will order that the minor pay for property damages

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[78]S. Davis, Rights of Juveniles 2-4 (2d ed. 1985). N.D. Cent. Code sec. 12.1-04-01 (1973). See Gammons v. Berlat: The Juvenile Incapacity Provisions, 27 Az. L. Rev. 923 (1985).

[79]See S. Davis, supra note 78 at 1-3.

[80]Blacketer, Charles v. Superior Court: Restitution and the Juvenile Offender, 12 W.St.U.L. Rev. 769, 771 (1985).

caused by the minor.[81] North Dakota statutes allow the courts to impose a restitution requirement if a minor has caused property damages and the minor will be placed on probation.[82] The court will look to the ability of the minor to make the restitution and whether the ordering of restitution will be rehabilitative when deciding if restitution will be ordered.[83] These factors will also be considered in setting the restitution amount. A 1987 amendment to North Dakota's statutes allows the court to order a recovery of medical expenses incurred as a result of a criminal activity.[84] Victims prefer to receive a court ordered restitution because this will save the victim from the expense of hiring an attorney to commence a lawsuit to recover a judgment against the minor. Many jurisdictions do not follow this approach. In most jurisdictions the victim is forced to commence a separate civil lawsuit (based on an intentional tort theory) to collect for their damages. Even in jurisdictions which award restitution for property damages, the judge generally will not order a minor to reimburse a victim for personal injuries caused by the minor. A victim suffering personal injuries in most jurisdictions has no alternative but to commence a civil lawsuit against the minor.

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[81] Id. at 770.

[82] N.D. Cent. Code sec. 12.1-32-07(e) (1973).

[83] N.D. Cent. Code sec. 12.1-32-08 (1973).

[84] N.D. Cent. Code sec. 12.1-32-08(1)(c)(1987).

2. Minnesota Law.

Minnesota's approach is similar to North Dakota. In Minnesota, if a juvenile is found to be delinquent, the juvenile may be fined up to $700.00,[85] and the juvenile may be ordered to make restitution as a condition of probation.[86] If the restitution is not paid in full, then the probation officer can seek a hearing to determine if the conditions of probation should be changed.[87]

In summary, it is clear that minors can be held both civilly and criminally responsible for their wrongful actions. Tortious conduct by a minor is therefore clearly distinguishable from luxury contracts for which minors are able to successfully disaffirm and escape responsibility. Minors can be held liable for many of their actions, but they often have insufficient assets to meet their obligations. Therefore parental liability becomes extremely important.

IV. Parental Liability for their Children's Contracts.

Parents have no responsibility for most contracts executed by their children. However, there are two situations where parental liability does arise. The most common situation is when a parent

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[85]Minn. Stat. Ann. sec. 260.185(1) (1984).

[86]Minn. Stat. Ann. sec. 260.185(3)(a) (1983).

[87]Id.

co-signs or guarantees a contract of their child.[88] The most common situation involving this activity is when the minor is purchasing an automobile. The car dealer refuses to sell to the minor alone and the child convinces the parent to join the contract to enable the child to make the purchase. If the child defaults and disaffirms the contract, the parent who has co-signed the contract can be sued by the seller of the car.

The second situation where a parent faces contractual liability is when a parent fails to provide necessities (food, clothing, medical attention, and shelter) for the minor and the minor enters into contracts to purchase these necessities.[89] For example, if a parent refuses to purchase a winter coat for his/her child and the minor enters into a contract to purchase a coat--the parent can be held liable on the contract. The parent should have provided this necessity to his/her child.[90]

A. North Dakota Law

The North Dakota Century Code provides a reciprocal duty of support concerning necessaries.[91] Parents are supposed to provide

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[88]When a parent signs a contract it becomes a contractual obligation of the parent and this creates the potential for a breach of contract action against the parent when the child fails to complete the contract.

[89]See generally 59 Am. Jur. 2d Parent and Child sec. 44-50 (1987).

[90]Id.

[91]N.D. Cent. Code sec. 14-09-10 (1943). Bismarck Hospital & Deaconesses Home v. Harris, 280 N.W. 423 (1938).

necessaries for their children; in turn, children have an obligation to support their elderly parents.[92]

North Dakota law also provides for parental liability for necessities if welfare assistance is used to purchase necessities. If a child receives welfare assistance from the State of North Dakota to buy food, clothing, etc., then the county can recover from the parent the monies advanced for the purchase of the necessities.[93]

B. Minnesota Law.

Minnesota case law requires a parent to provide minor children with necessaries.[94] The parent becomes liable to third persons who furnish necessaries to a child, even though the necessaries are provided without the parents' consent.[95] Minnesota cases have specifically held that medical expenses[96] and educational expenses[97] are necessities which must be furnished by a parent. Minnesota statutes also provide that a parent may be held liable for public assistance monies advanced on behalf of a minor child.[98]

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[92] Id.

[93] N.D. Cent. Code sec. 50-01-19 (1943).

[94] W. Prosser & W. Keeton, supra note 44 at 913.

[95] Id.

[96] Id. See also Levine, Parental Liability for the Torts of Their Minor Children: Limits, Logic, and Legality, 9 Nova L.J. 205, 218 (1984).

[97] 14B Dunnell Minn. Digest Parent and Child sec. 6.04.

[98] Lufkin v. Harvey, 154 N.W. 1097 (1915).

Parental liability for their children's contracts is not very extensive throughout the United States. Parental liability for the contracts of their children is primarily limited to necessity contracts. Since the most commonly breached contracts by minors involve luxury contracts, parents generally do not have to worry about contract liability unless they have co-signed the contract. Clearly the greatest risk to a parent is parental liability for their children's tortious conduct.

V. Parental Liability for Wrongful Actions of Children.

Unfortunately, children have long had a tendency for malicious mischief or carelessness often resulting in injury to people or property. As indicated above, children are responsible for their own torts. However, children rarely possess the means to compensate the victims of their actions. If parents are not held responsible victims are often left without an effective remedy.

A. Intentional Injuries Inflicted by a Minor.

1. Common Law.

At common law parents were generally not responsible for the wrongful actions of their children.[99] Only the child faced responsibility for his/her torts.[100] Parental liability arose if the parent entrusted a minor with a dangerous instrument or if the parent became aware of vicious propensities of the child and did

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[99]Bigelow v. Hill, 152 N.W. 763 (1915).

[100]Kienlen v. Kienlen, 34 N.W.2d 351 (1948).

not do anything to control the recognized misconduct.[101] For example, if Junior had just burned down the third building within the last year, the parents could be held liable under the common law. The parents would be deemed to be on notice of the propensity of Junior to play with matches after the first fire and the parents failed to control Junior's action. Limiting parental liability to this type of situation is a very narrow approach to parental liability and often leaves victims uncompensated and frustrated with the legal system. Today, parents face liability under two main theories of law: statutory liability and negligent supervision.[102]

2. Statutory Liability of Parents.

Modern tort statutes have been passed in all states, imposing varying degrees of responsibility on parents for the wrongful actions of their children.[103] Typical statutes limit responsibility to malicious intentional acts by the minor and

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[101]Minn. Stat. Ann. sec. 256.87 (1983); Isanti County v. Formhals, 358 N.W.2d 703 (1984).

[102]See Levine, supra note 91; Vicarious Parental Liability in Connecticut: Is It Effective?, 7 U. Bridgeport L. Rev. 99 (1986); The Civil Liability of Soldiers for the Acts of Their Minor Children, 115 Mil. L. Rev. 179 (1987); Dennis the Menace, and the Wonderland of Children's Torts, 58 Law Inst. J. 660 (1984); Comment, Liability of Negligent Parents for the Torts of their Minor Children, 19 Ala. L. Rev. 123 (1966); Note, A Constitutional Caveat on the Vicarious Liability of Parents, 87 Notre Dame Law. 1321 (1972).

[103]The following materials indicate the statutes passed in each state which establish statutory parental liability for wrongful actions of children. The table is reproduced from footnote 115, Levine, Parental Liability for the Torts of Their Minor Children: Limits, Logic, and Legality, 9 Nova L.J. 205, 220-221 (1984).

	MAX RECOV.	PI COV?	AGE LIMITS	STATE OF MIND
ALA. CODE § 6-5-380 (1975).	500	N	18	Int/M/W
ALASKA STAT. § 34.50.020 (1975).	2000	N	18	M/W
ARIZ. REV. STAT. ANN. § 12-661 (1956 & Supp. 1982).	2500	Y	Minor	M/W
ARK. STAT. ANN. § 50-109 (Supp. 1983).	2000	N	18	M/W
CAL. CIV. CODE § 1714.1 (Deering 1984).	10000	Y	Minor	M/W
COLO. REV. STAT. § 13-21-107 (Supp. 1973 & 1983).	3500	Y	18	M/W
CONN. GEN. STAT. ANN. § 52-572 (West Supp. 1984).	3000	Y	Minor	M/W
DEL. CODE ANN. tit. 10 § 3922 (1974 & Supp. 1980).	5000	N	18	Int/R
FLA. STAT. § 741.24 (1983).	2500	N	18	M/W
GA. CODE ANN. § 51-2-3 (1976 & Supp. 1984).	5000	N	18	M/W
HAWAII REV. STAT. § 577-3 (1976).	none	T	Minor	•
IDAHO CODE § 6-210 (1979).	1500	N	18	M/W
ILL. ANN. STAT. ch. 70 §§ 53-57 (Smith-Hurd Supp. 1983).	1000	Y	11-19	M/W
IND. CODE ANN. § 34-4-31-1 (Burns Supp. 1984).	2500	Y	Child	Int
IOWA CODE ANN. § 613.16 (West Supp. 1983).	1000	Y	18	Unlaw
KAN. STAT. ANN. § 38-120 (1981).	1000	Y	18	M/W
KY. REV. STAT. ANN. § 405.025 (Supp. 1982).	2500	N	Minor	W
LA. CIV. CODE ANN. art. 2318 (West 1979).	none	D	Minor	•
ME. REV. STAT. ANN. tit. 19, § 217 (Supp. 1979).	800	Y	7-17	M/W
MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (1984).	5000	Y	Child	•
MASS. GEN. LAWS ANN. ch. 231, § 85G (West 1984).	2000	Y	7-18	W
MICH. COMP. LAWS ANN. § 600.2913 (1983).	2500	Y	Minor	M/W
MINN. STAT. ANN. § 540.18 (West 1984).	500	Y	18	M/W
MISS. CODE ANN. § 93-13-2 (1983).	2000	N	10-18	M/W
MO. ANN. STAT. § 537.045 (Vernon 1984).	2000	Y	18	Pur
MONT. CODE ANN. § 40-6-237 (1983).	2500	N	18	M/W
NEB. REV. STAT. § 43-801 (1978).	1000	Y	Minor	W/Int
NEV. REV. STAT. § 41.470 (1979).	10000	Y	Minor	W
N.H. REV. STAT. ANN. § 592-A:16 (1974).	fine	N	Minor	•
N.J. STAT. ANN. § 2A:53A-15 (West 1984).	none	N	18	M/W
N.M. STAT. ANN. § 32-1-46 (1981).	2500	Y	Child	M/W
N.Y. GEN. MUN. LAW § 78-a (Consol. 1983).	1500	N	10-18	M/W
N.C. GEN. STAT. § 1-538.1 (1983).	1000	Y	Minor	M/W
N.D. CENT. CODE § 32-03-39 (1976).	1000	N	Minor	M/W
OHIO REV. CODE ANN. §§ 3109.9 to 3109.10 (Page 1980).	3k/2k	Y	18	M/W
OKLA. STAT. tit. 23, § 10 (West Supp. 1983).	2500	Y	18	Crim
OR. REV. STAT. § 30.765 (1983).	5000	Y	Minor	Int
PA. STAT. ANN. tit. 11, §§ 2001-2005 (Purdon Supp. 1983).	1000	Y	18	W/T
R.I. GEN. LAWS § 9-1-3 (Supp. 1983).	1500	Y	Minor	M/W
S.C. CODE ANN. § 20-7-340 (Law. Co-op. Supp. 1983).	1000	N	17	M/Int
S.D. CODIFIED LAWS ANN. § 25-5-15 (Supp. 1983).	750	Y	18	M/W
TENN. CODE ANN. §§ 37-10-101, -102, -103 (1984).	10000	N	18	M/W
TEX. FAM. CODE ANN. §§ 33.01, -.02 (Vernon 1975 & Supp. 1984).	15000	N	12-18	M/W
UTAH CODE ANN. §§ 78-11-20, -21 (1977).	1000	N	Minor	Int
VT. STAT. ANN. tit. 15, § 901 (1974).	250	Y	17	M/W
VA. CODE §§ 8.01-43, -44 (1984).	500	N	Minor	M/W
WASH. REV. CODE ANN. § 4.24.190 (Supp. 1984).	3000	Y	18	M/W
W. VA. CODE § 55-7A-2 (Supp. 1984).	2500	Y	Minor	M/W
WIS. STAT. ANN. § 895.035 (West 1983).	1000	Y	Minor	M/W
WYO. STAT. § 14-2-203 (1978).	300	N	10-17	M/W

MAX RECOV. = Maximum amount recoverable from tortfeasor's parent(s).
none = no limit; k = thousand; fine = fine imposed on parent.
PI COV? = Personal Injury Covered by statute.
Y = Yes; N = No; T = Torts; D = Damages.
AGE LIMITS = Limits on age of tortfeasor.
STATE OF MIND = Tortfeasor's state of mind at time tort was committed.
M = Malicious; W = Willful; Unlaw = Unlawful; Int = Intentional; R = Reckless; Pur = Purposeful; Crim = Criminal; Del = Delinquent; T = Tortious; • = Statute does not refer to state of mind.

place a maximum ceiling on the amount which can be recovered from the parents.[104] Allowable amounts range from a low of $250.00 in Vermont[105] to a high of $15,000.00 in Texas.[106] Hawaii, Louisiana, and New Jersey have not set a maximum limit on the amount which can be recovered from parents for the actions of their children.[107] Parents in these three states face unlimited liability for the actions of their children. In 20 states parents are only liable for property damages and not personal injuries caused by their children.[108] The remaining 30 states allow a recovery for personal injuries up to the statutory amount provided for in each state.[109] Since the maximum amount is relatively low, it appears that the approach of most states is to try to discourage delinquency rather than to completely compensate injured victims.[110] A key characteristic of the parental liability statutes is that the parent is liable even if there is no evidence that the parent failed to use reasonable care.[111] It

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[104] Id. at 222.

[105] Vt. Code sec. 8.01-43, 44 (1984).

[106] Tex Fam. Code Ann. sec. 33.01, 33.02 (Vernon 1975 & Supp. 1984). Note that Hawaii, Louisiana, and New Jersey have no maximum limit on the recovery from parents for their children's wrongs. See table of statutes in note 103.

[107] See table of statutes in note 103.

[108] Id.

[109] Id.

[110] General Insurance Co. of America v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963). See Levine, supra note 96 at 222.

[111] Id.

is no defense that the parent can show that the parent attempted to properly supervise the activities of the child. In order to recover from the parent there is no need to show that the parent was somehow at fault.

a. North Dakota Parental Statutory Liability.

In North Dakota parents may by statute be held liable for malicious property damage caused by their children. The maximum liability of a parent is $1,000.00.[112] Note that in North Dakota, parents are only responsible for property damages (not personal injuries) and the actions of the child must be malicious or willful.[113] If a child has negligently or carelessly harmed another, the parent is not liable under the North Dakota statute.

Any person, town, county, school district, state department, partnership, corporation, or association who is injured by a child living with a parent may sue the parent of the child.[114] It is interesting to note that by the terms of the North Dakota statute, the child must be living with the parent in order for this statutory liability to arise. Apparently the North Dakota legislature felt that the parent lacks control if the child is not living at home and should therefore not be statutorily liable. Many states are not nearly so protective of parents.

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[112]N.D. Cent. Code sec. 32-03-39 (1975). Note that the child will have unlimited liability for his wrongful actions. The parent's liability is deemed joint and several up to the amount of $1,000.00. N.D. Cent. Code sec. 32-03-09.2 (1977).

[113]N.D. Cent. Code sec. 32-03-39 (1975).

[114]Id.

Certainly some would argue that North Dakota should expand parental liability beyond a maximum amount of $1,000.00. Perhaps more potential liability would motivate parents to discuss with their children the importance of respecting other's property rights. Victim's rights appear to be inadequately protected when parental liability amounts are set low. On the other hand, all parents can appreciate how difficult it is sometimes to control the actions of an immature child. This problem is magnified by the common usage of drugs and alcohol by children. The North Dakota statute is one of the more conservative approaches to this problem. It is, therefore, worth comparing it with Texas, where a broader liability is imposed on parents.

b. Texas Parental Statutory Liability

Texas has adopted a statute which imposes broad liability on parents.[115] In Texas, if a child between the ages of 12 and 18 maliciously causes property damages, the parent who has the duty of control is liable for up to $15,000.00 per wrongful act.[116]

The Texas statute survived a constitutional challenge and was clarified in the case of Buie v. Longspaugh.[117] The facts of this case are indicative of the problems often confronted when juveniles vandalize property. In this case, two juvenile girls

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[115]Tex Fam. Code Ann. sec. 33.01, 33.02 (Vernon 1975 & Supp. 1984).

[116]Id.

[117]598 S.W.2d 673 (1980).

broke into three separate homes in Fort Worth, Texas.[118] The girls plugged drains in the sinks, turned on the faucets, and left.[119] The homes all suffered extensive water damage. The parents were sued under the parental liability statute. The parents argued that their children's actions should be treated as one incident (one night out on the town), with a maximum liability of $15,000.00.[120] The court ruled that each house break-in constituted a separate incident thereby increasing the parental liability to a maximum of $45,000.00 (up to $15,000 at each residence) rather than $15,000.00.[121] This case has the effect of reducing a parent's liability if the child does all the damage at one location rather than damaging several properties. For example, if a child breaks into a school building and spends several hours destroying property, the damages could exceed hundreds of thousands of dollars, but under Texas law the parent would only be liable for $15,000.00. However, if the child vandalized ten separate houses, the parents could be liable for up to $150,000.00.

The Texas case indicated that the parent is liable even if there is no evidence that the parent was at fault or somehow negligent.[122] Close control and surveillance is no defense for

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[118] Id. at 674.

[119] Id.

[120] Id. at 676.

[121] Id.

[122] Id.

parents. The court stated that the Texas statute "will provide the greatest amount of encouragement for parents to train, control, and discipline their children".[123]

The final feature worth noting about the Texas statute is that the statute provides that a parent can be held responsible for a negligent act of a minor if the conduct of the child is reasonably attributable to the negligent failure of the parent to control the child.[124] This is unusual in that most states do not include possible parental liability for negligent actions of a child. Note that even under the Texas statute, it must be shown that the parent has negligently failed to control the child before the statutory liability will arise. North Dakota only imposes statutory liability for a child's malicious wrongful actions.

c. Minnesota Parental Statutory Liability.

As a final comparison, note that Minnesota has an approach similar to North Dakota.[125] Minnesota statutes impose parental liability up to $500.00 for malicious actions of a child.[126] The key difference between the Minnesota approach and the North Dakota approach is that Minnesota imposes on parents liability for personal injuries as well as property damages caused by children.[127]

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[123] Id.

[124] Tex Fam. Code Ann. sec. 33.01 (Vernon 1975 & Supp. 1984).

[125] Minn. Stat. Ann. sec. 540.18 (West 1984).

[126] Id.

[127] Id.

The Minnesota statute specifically states that the statute does not preclude a separate legal action against a parent for negligent supervision.[128] This indicates that if it can be shown that the parents were at fault in failing to control their child then they can be sued directly for their negligence. Note that this is a much more difficult theory to win under because fault must be shown. Under the statutory liability the parents are liable even if fault of the parent is not established or present.

3. Negligent Supervision.

As indicated above, under parental statutory liability statutes, even if they are careful the parents still are liable automatically (vicariously) for the actions of their children. Under a negligent supervision theory the parents are sued directly for their own actions--their negligent failure to adequately supervise the actions of their children.[129]

Obviously, this is a much more difficult theory to prove than the statutory liability discussed above. It is a more difficult theory because the parent must be shown to have been negligent and that the parent's negligence caused or contributed to the victim being harmed. This more difficult theory will be used when the statutory liability statutes allow an insufficient recovery. If a victim suffers $50,000.00 in damages as a result of the actions of a child and the maximum parental statutory liability is set at

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[128] Id.

[129] Restatement (Second) of Torts, sec. 316; W. Prosser & W. Keeton, supra note 44 at 914-915.

$1,000.00, there is certainly an incentive to commence the more difficult negligent supervision tort lawsuit against the parents.

A North Dakota case which illustrates this theory is Peterson v. Rude.[130] In this case a 16 year old boy injured another youth with an air rifle.[131] The father had given the rifle to the son as a gift. The victim attempted to recover from the parent on a negligence theory, but the court held in favor of the parent.[132] The Court felt that there was no evidence to indicate that the son was misusing the rifle. If the parent had known that the son was acting carelessly with the gun, then the parent would have had some responsibility to properly instruct the son on gun safety or to take the gun away from the youth.[133]

The four elements of a negligence action (existence of a duty, breach of the duty of care, proximate cause, and damages) as discussed above will all have to be shown in order to obtain a judgment against the parent. These cases are difficult to win mainly because it is difficult to meet the proximate cause requirement--that there is a foreseeable connection between the action of the parent and the damages suffered by the victim. Recovery under this theory will be difficult unless it can be shown that the minor had a propensity to cause a particular type of harm or injury and that the parent was aware of the dangerous

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[130] 146 N.W.2d 555 (N.D. 1966).

[131] Id. at 556.

[132] Id. at 558.

[133] Id.

propensity. If a parent observes a recurring dangerous activity--the parent must take action to correct the child's activity or the parent may well face liability on a negligence claim.

The key characteristic of the negligent supervision claim is that there is no set maximum allowable amount which can be recovered from the parent as is present under statutory liability statutes. If the parents are found to be negligent, then they have unlimited liability for their negligence. This could bankrupt a parent if the child causes extensive damages or injuries and the parent is found to have been negligent. Responsibility for personal injuries inflicted by a child is perplexing because huge judgments are obtainable under our present legal system if personal injuries are suffered.

V. Concluding Observations.

Actions of children affect many people. The people most commonly affected are parents, merchants, and victims of vandalism. It is important that all of these groups know and understand their rights and obligations arising from contact (either by contract or by tort) with children.

People who enter into contracts with children need to understand that minors may disaffirm their contracts and obtain a refund of any monies advanced. Merchants in North Dakota no doubt wish that the state statutes would force minors to make restitution before receiving a full refund of funds advanced. This perhaps would be a welcome change to the present law in that

merchants would be better protected and minors would be taught that they can not abuse the legal system without suffering some consequences.

Parental responsibility for the torts of children is probably the most sensitive issue involved in this area of the law. Balancing a victim's right to be compensated with the imposition of parental liability is difficult. Arguably the statutory limits on parental liability in most states are insufficient and should be increased to a higher amount. Certainly victims can validly assert that $1,000.00 (or less in many states) does not go very far if the victim has suffered extensive damages. This is even more persuasive given the fact that it is very difficult for victims in most circumstances to recover from parents under a negligent supervision theory. A highly publicized increase in the statutory parental liability could perhaps stimulate parents to discuss the implications of delinquent behavior with their children. This could be the first step toward eliminating the problem of vandalism.